

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

SUSAN MERRY, )  
Plaintiff, ) Cause No.: 4:19-cv-00216  
v. ) **JURY TRIAL DEMANDED**  
LINCOLN COUNTY, STATE )  
OF MISSOURI, )  
Defendant. )

**DEFENDANT'S NOTICE OF REMOVAL  
OF A CIVIL ACTION FROM STATE COURT**

Defendant Lincoln County, State of Missouri (“Defendant”), by and through the undersigned counsel, pursuant to 28 U.S.C. § 1441 and § 1446, for Defendant’s Notice of Removal of a Civil Action from State Court, states as follows:

## THE STATE COURT ACTION

1. On December 28, 2018, Plaintiff Susan Merry (“Plaintiff”) commenced a state court civil action against Defendant in the Circuit Court of Lincoln County, State of Missouri, Cause No.: 18L6- CC00163.
2. Pursuant to 28 U.S.C. §1446(a) and E.D.Mo.L.R. 2.03, a true and accurate copy of the complete court file and current docket report from the state court action that contains all process, pleadings, orders, and other documents on file in the state court action at the time of filing this notice of removal is attached hereto as Exhibit A and incorporated herein by reference.
3. Plaintiff alleges in the Petition that she filed in the state court action that she was employed by Defendant and that Defendant allegedly discriminated against her because of Plaintiff’s alleged disability. [Ex. A- Petition]

4. Plaintiff's Petition asserts causes of action against Defendant for: (a) allegedly engaging in unlawful employment practices in violation of 42 U.S.C § 12101, *et seq.*, Title I of the Americans with Disabilities Act ("ADA") (Counts I, II, and II); and (b) allegedly engaging in unlawful employment practices in violation of 29 U.S.C. § 2615 and § 2617 of the Family and Medical Leave Act ("FMLA") (Count IV). [Ex. A- Petition]

#### **TIMELINESS OF REMOVAL**

5. Defendant first received a copy of the Petition when Defendant was served with it and a summons on January 14, 2019.

6. The filing of this notice of removal is timely pursuant to 28 U.S.C. §1446 because it is being filed within thirty (30) days of when Defendant first received a copy of the Petition and summons on January 14, 2019 and within one (1) year after commencement of the state court action.

#### **JURISDICTION AND VENUE**

7. Pursuant to 28 U.S.C. §1331, this Court has original jurisdiction over Plaintiff's causes of action under the ADA and the FMLA because those causes of action involve a federal question and arise under federal statutes and the laws of the United States.

8. Pursuant to 28 U.S.C. §1441(a), venue is proper in this Court because the state court action is currently pending in the Circuit Court of Lincoln County, Missouri, which is located within the geographical boundaries of the Eastern Division of the United States District Court for the Eastern District of Missouri.

#### **LEGAL GROUNDS FOR REMOVAL**

9. Pursuant to 28 U.S.C. § 1331 and § 1441, Defendant is entitled to remove the state court action to this Court because the causes of action asserted in the state court action

under the ADA and the FMLA involve a federal question and arise under federal statutes and the laws of the United States.

### **FILING AND NOTICE REQUIREMENTS**

10. Pursuant to E.D.Mo.L.R. 2.02, the Civil Cover Sheet is attached hereto as Exhibit B.

11. Pursuant to E.D.Mo.L.R. 2.02, the Original Filing Form is attached hereto as Exhibit C.

12. Pursuant to 28 U.S.C. §1446(d) and E.D.Mo.L.R. 2.03, Defendant will promptly provide a copy of this notice of removal to all adverse parties and Defendant will file with this Court as a separate document a copy of the written notice provided to all adverse parties.

13. Pursuant to 28 U.S.C. §1446(d) and E.D.Mo.L.R. 2.03, Defendant will promptly file a copy of this notice of removal with the Circuit Court of the Lincoln County, Missouri and Defendant will file with this Court as a separate document a copy of the notice provided to the state court after the state court has placed a filed stamp on said notice as an acknowledgement of the filing of the notice of removal in state court.

### **JURY TRIAL DEMANDED**

14. Pursuant to Federal Rules of Civil Procedure 38 and 81(c) and E.D.Mo.L.R. 2.04, Defendant has set forth in the top right hand corner of the first page of this notice of removal in all bold, capital letters the words "**JURY TRIAL DEMANDED**" and thereby requests a trial by jury in this civil action.

WHEREFORE, Defendant has removed the aforementioned state court action to this Court and prays that this Court exercise jurisdiction over this action the same as if the action had

originally been instituted herein and respectfully requests that the Court grant Defendant such other and further relief as the Court deems just and proper.

Respectfully submitted,

PAULE, CAMAZINE & BLUMENTHAL, P.C.  
*A Professional Corporation*

By: s/ Bradley J. Sylwester

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the attorney whose name appears above signed the original of this pleading and that a true and correct copy of the foregoing was filed with the Clerk of the Court to be served by the operation of the Court's electronic filing system and sent via First Class U.S. Mail this 12<sup>th</sup> day of February, 2019 to:

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Attorneys for Plaintiff

/s/ Bradley J. Sylwester

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